

**REMARKS**

Claims 1-7 were examined and reported in the Office Action. Claims 1 and 7 are rejected. Claims 1 and 2 are amended. Claims 1-7 remain.

Applicants request reconsideration of the application in view of the following remarks.

**I. 35 U.S.C. §102(e)**

It is asserted in the Office Action that claims 1 and 7 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,092,638 issued to Funami et al. (“Funami”). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2131,

’[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.’ (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). ‘The identical invention must be shown in as complete detail as is contained in the ... claim.’ (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Applicant’s amended claim 1 contains the limitations

[a]n optical channel power equalizer for equalizing per-channel power levels of a multi-channel optical signal, in which a plurality of channels are multiplexed and amplified, the optical channel power equalizer comprising: an optical spectrum measurement unit that extracts a portion of the amplified optical signal and measures the per-channel power levels of the extracted optical signal, the optical spectrum measurement unit including an optical input unit that adjusts a spot size of the input optical signal; a controller that compares the measured power levels with a predetermined reference value, and determines to output the degrees of attenuation per channel based on differences between the measured per-channel

power levels and the reference value; and a per-channel optical attenuation unit that attenuates the per-channel power levels of a plurality of input optical signals based on the degrees of attenuation and outputs the attenuated optical signals as the plurality of channels.

Funami discloses an optical multiplex communication system. Applicant's amended claim 1 contains the limitations of "an optical spectrum measurement unit that extracts a portion of the amplified optical signal and measures the per-channel power levels of the extracted optical signal, the optical spectrum measurement unit including an optical input unit that adjusts a spot size of the input optical signal." Funami, however, does not teach, disclose or suggest the limitations in claim 1 of "the optical spectrum measurement unit including an optical input unit that adjusts a spot size of the input optical signal."

Therefore, since Funami does not disclose, teach or suggest all of Applicant's amended claim 1 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(e) has not been adequately set forth relative to Funami. Thus, Applicant's amended claim 1 is not anticipated by Funami. Additionally, the claims that directly or indirectly depend on claim 1, namely claim 7, is also not anticipated by Funami for the same reason.

Accordingly, withdrawal of the 35 U.S.C. §102(e) rejection for claims 1 and 7 is respectfully requested.

## **II. Allowable Subject Matter**

Applicant notes with appreciation the Examiner's assertion that claims 2-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully asserts that claims 1-7, as they now stand, are allowable for the reasons given above.

**CONCLUSION**

In view of the foregoing, it is believed that all claims now pending, namely 1-7, patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

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**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

Jean Svoboda

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